of marriages of lunatics, *Waymire* v. *Jetmore* (1872) 22 Ohio St. 271; *True* v. *Ranney* (1850) 21 N. H. 52, and marriages made in jest, *McClurg* v. *Terry* (1870) 21 N. J. Eq. 225; though they have refused to annul marriages for impotence, *Anonymous* (1873) 24 N. J. Eq. 19, and cruelty. *Perry v. Perry* (N. Y. 1831) 2 Paige Ch. 501. Occasionally they have assumed power, independently of statute, to grant divorces, *Cast* v. *Cast* (1873) 1 Utah 112; *Rose* v. *Rose* (1849) 9 Ark. 507 (dictum); *Stebbens* v. *Anthony* (1880) 5 Colo. 348 (dictum); and when, in the course of a bill for an accounting, it became necessary to determine the validity of a marriage and the legitimacy of children, the jurisdiction to do so was upheld. *Fornshill* v. *Murray* (Md. 1828) 1 Bland's Ch. 479. Consequently, although it is true, broadly speaking, that the remedies of establishing and destroying personal status did not belong to the original jurisdiction of Chancery, 1 Pom. Eq. Jur. § 112, p. 123, some slender framework of authority surely does exist for an expansion of Equity's powers in this direction. There seems no good reason why, having virtually exploded the property rights theory, courts of equity should not proceed, in the exercise of proper caution, to avoid conflict with criminal laws and constitutions, and interference with the other departments of the government, to extend relief in each successive situation in which, through inadequacy of other remedy, the personal, civil or political rights of states or individuals are menaced with invasion. The principal cases are significant as indicating a strong tendency towards such a conception of Equity's powers.

ASSIGNABILITY OF "EASEMENTS IN GROSS."—At common law the owner in fee simple of land had no power to grant a right in his land in the nature of an easement to another person unless the latter owned land in the immediate vicinity to which the right could become appurtenant. No estate or interest of such a character could be created which was assignable by the grantee. *Rangeley* v. *Midland R. R.* (1869) L. R. 3 Ch. App. 306; *Ackroyd* v. *Smith* (1850) 10 C. B. 164. The limitation upon the power of the owner of land to dispose of such rights arises from the policy of the law against the creation of new and unusual estates in, and burdens upon, land. *Keppel* v. *Bailey* (1834) 2 Myl. & K. 517. This doctrine has been generally followed in the United States, and an "easement in gross" may not be assigned even though the clear intention of the parties is that it should pass. *Fisher* v. *Fair* (1890) 34 S. C. 203; *Boatman* v. *Lalsley* (1873) 23 Oh. St. 614; *Cadwalader* v. *Bailey* (1893) 17 R. I. 495; *Garrison* v. *Rudd* (1858) 19 Ill. 558; *Hall* v. *Armstrong* (1886) 33 Conn. 554, 556. The policy of the law, however, does not extend to a general discouragement of all rights *in alieno solo*, and easements will not be presumed to be in gross, therefore, if they can fairly be construed to be appurtenant. *Taylor* v. *Dyches* (1882) 69 Ga. 455; *Sauxay* v. *Hunger* (1873) 42 Ind. 44; *French* v. *Williams* (1886) 82 Va. 462; *Horner* v. *Keene* (1899) 177 Ill. 390; *McMahon* v. *Williams* (1885) 79 Ala. 288; *Hopper* v. *Barnes* (1896) 113 Cal. 636. In Massachusetts, the doctrine of *Ackroyd* v. *Smith, supra,* as representative of the existing English law, has apparently been repudiated, and "easements in gross" may be assigned. *Goodrich* v. *Burbank* (1866) 12

Allen 459; *Amidon* v. *Harris* (1876) 113 Mass. 59. It has been denied that these cases establish this doctrine, 14 L. R. A. 335, n, the argument being that since the right granted in both cases was to take water from a spring, there existed a *profit a prendre* and not a mere easement. If this were so, the contention is clearly correct for it is universally recognized that profits in gross may be assigned. *Welcome* v. *Upton* (1840) 6 M. & W. 535; *Muskett* v. *Hill* (1839) 5 Bing. N. C. 694; *Post* v. *Pearsall* (1839) 22 Wend. 425, semble; *Tinicum Fishing Co.* v. *Carter* (1869) 61 Pa. St. 21. But this argument is open to two objections; first, the right to take spring water was not a profit at common law; *Race* v. *Ward* (1855) 4 E. & B. 702; *Manning* v. *Wasdale* (1836) 5 A. & E. 758; secondly, while the Massachusetts courts in their opinions dwelled upon the fact that the water was "taken" or "sold," nevertheless they seemed squarely to hold that the "*easements*" were in gross and assignable and it hardly seem justifiable to explain the decisions on the ground of the loose use of the term "easement." The Massachusetts holding has been followed in Wisconsin, *Poull* v. *Mockley* (1875) 33 Wis. 482, while the same result has been reached in California by statute. Cal. Civ. Code, §§ 654, 802, 1044. *Fudickar* v. *East Riverside* (1895) 109 Cal. 29. In New York the common law rule is usually followed, but Earl, J., in *Mayor etc. of New York* v. *Law* (1891) 125 N. Y. 380 recognized an easement in gross, the basis for the exception to the general rule not appearing clearly, however, in the decision. The right granted in this case resulted in the collection by the grantee of wharfage, and hence the case, on its facts, is somewhat analogous to *Goodrich* v. *Burbank, supra,* and *Amidon* v. *Harris, supra.* In Illinois a right of way incident to a right to post advertising signs on a fence has been held to be an easement in gross. *Willoughby* v. *Lawrence* (1886) 116 Ill. 11.

Any departure from the old rule might naturally be first expected in equity. In a recent case in New Jersey an owner of land had granted by an instrument under seal a right to an oil company to lay pipes through his land. The court held that the right was not an ordinary easement, was "something more than a license," and was an estate and interest in the land which was assignable by the grantee and irrevocable by the grantor. *Standard Oil Co.* v. *Buchi* (N. J. Eq. 1907) 66 Atl. 427. The decision marks a new step in this jurisdiction and was only arrived at by distinguishing a number of previous cases. In England itself, the case of *Rymer* v. *McIlroy* L. R. [1897] 1 Ch. 528 is significant in this connection. A grant of a way was upheld, although the interest held by the grantee was only a tenancy from year to year. Subsequently he acquired the fee and the court held the way still continued. The decision cannot be explained on the ground of a license coupled with an interest, as that in *Willoughby* v. *Lawrence, supra,* might be, for the grantee had no interest in the servient tenement. The way could not have become appurtenant when the grantee acquired the fee because this would have made the grant of the way operate *in futuro.* Nor could it have been appurtenant when granted, for a leasehold estate could not serve as a dominant tenement. The logical deduction from the decision, therefore, is that an easement in gross was granted. The court did not rest it on this ground, however, and it is doubtful if it would have permitted an assignability of the right, but the case is valuable as

showing the occasional tendency of equity to slight the common law rule. This review of the modern cases shows a still strong adherence to the old principles, with a departure from them in but few jurisdictions.

In those jurisdictions following *Rerich* v. *Kern* (Pa. 1826) 14 S. & R. 267; see 4 COLUMBIA LAW REVIEW 381; 6 id. 280, 471, the same or a similar result would probably be reached as that arrived at in the principal case as regards the irrevocability of the right granted, provided the grantee had acted upon the grant. For the deed, construed as conveying no estate, would at least create a license. This being so, the building of the pipe line would render it irrevocable by *Rerich* v. *Kern, supra,* and at the same time by its connection with the grantee's oil refinery cause the latter to become the dominant tenement. All the necessary elements would thus be present. *Cady* v. *Springfield etc. Co.* (1892) 134 N. Y. 118; *Perrin* v. *Garfield* (1864) 37 Vt. 304.

DIRECTOR'S SECURING RENEWAL OF LEASE OF PREMISES OCCUPIED BY HIS CORPORATION.—It is a familiar doctrine of equity that a fiduciary will be rigorously prevented from making any personal profit out of his trust. Where a trustee, acting as such, contracts with himself as an individual, the transaction is voidable without proof of fraud in fact. *Greenlaw* v. *King* (1840) 9 L. J. Eq. (N. S.) 377; s. c. 10 id. 129; *Michoud* v. *Girod* (U. S. 1846) 4 How. 503. While very many of the cases hold that such is the case where an interested corporation director represents the corporation in making an agreement with himself, *Parker* v. *Nickerson* (1873) 112 Mass. 195, there is a great conflict in the cases where he alone does not act for it, some courts applying the rule if the contracting director is necessary to a quorum in the board, *Butts* v. *Wood* (1867) 37 N. Y. 317, or necessary to a majority vote, *Bennett* v. *St. Louis &c. Co.* (1885) 19 Mo. App. 349, others not applying it if the contract is carried by a disinterested majority, *Buell* v. *Buckingham & Co.* (1864) 16 Iowa 284; *Leavitt* v. *Oxford & Geneva S. M. Co.* (1883) 3 Utah 265, and still others disregarding such facts entirely. *European &c. R. Co.* v. *Poor* (1871) 59 Me. 277. It is immaterial whether the trustee is one for a specific purpose, as to sell, or for a general purpose, as a managing partner or corporation director.

The same duty rests upon the trustee in dealings with third parties, when he acts within the general field of his trust duty. The duty extending not only to honest dealing, but often to general loyalty and vigilance, it follows that any favorable contract or transaction obtained by the trustee for himself will be impressed with a constructive trust, if he could have obtained it for his cestui. *Blake* v. *R. Co.* (1874) 56 N. Y. 485; *Mitchell* v. *Reed* (1874) 61 id. 123. This principle is applied in cases where the trustee has acted openly and adversely, *McClanahan's Heirs* v. *Henderson's Heirs* (Ky. 1820) 2 A. K. Marsh. *388, or secretly, *Anderson* v. *Lemon* (1853) 8 N. Y. 236, without as well as within the express scope of his trust authority, *Van Epps* v. *Van Epps* (N. Y. 1841) 9 Paige 237, or ostensibly for the cestui. *Trenton Banking Co.* v. *McKelway* (1849) 4 Halst. (8 N. J. Eq.) 84. But not every act done by a trustee must necessarily inure to the benefit of the cestui. Where the trustee has first tried to secure the benefit for the cestui,